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Modifying County Debt Limitation (State Measure 6); Salaries of State Legislators (State Measure 3); Capital Punishment Bill (State Measure 4)

City Club of Portland (Portland, Or.)

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**REPORT
ON
MODIFYING COUNTY DEBT LIMITATION
(STATE MEASURE NO. 6)**

TO THE BOARD OF GOVERNORS,
THE CITY CLUB OF PORTLAND:

The undersigned committee has studied the proposed "County Debt Limitation Amendment" to the Constitution of the State of Oregon amending Section 10, Article XI of the Constitution.

House Joint Resolution No. 21 passed by the 1957 State Legislature, referred this amendment to the voters to appear on the November 1958 General Election ballot. The resolution, introduced by the Committee on Local Government at the request of the Local Government Interim Committee, was passed unanimously by the Senate and with three dissenting votes in the House.

INTRODUCTION

Counties in Oregon can incur debt or liabilities exceeding \$5,000 only for permanent roads and bridges within the county or to suppress insurrection or repel invasion. The proposed amendment would enable the county to incur bonded indebtedness for any purposes authorized by statute. To carry out the purpose of the amendment, the 1957 State Legislature enacted House Bill No. 530 to become effective if the proposed amendment is adopted. This bill limits the bonded indebtedness of counties to two per cent of the true cash value of all taxable property in the county. House Bill No. 530 also provides for procedures in elections in which a county bond issue is on the ballot.

INVESTIGATION

Your committee was fortunate in having the affirmative side of this question presented by Kenneth C. Tollenaar, Assistant Director, Bureau of Municipal Research and Service, and, after March 1, 1956, Executive Secretary for the Joint Legislative Interim Committee on Local Government, and by John D. Mosser, State Representative, Washington County, who was one of the legislative sponsors of this proposal. The negative side was solicited from the three state representatives who cast dissenting votes in the House, and the committee received in reply a letter from Harry L. Wells, State Representative, Union and Wallowa Counties, and telephoned advice from Robert A. Bennett, State Representative, Multnomah County. Individual members of the committee also interviewed the following named persons to obtain their views and analyses of the proposed amendment: M. James Gleason, Commissioner, Multnomah County; William Bade, Oregon Tax Research, and Walter W. R. May, editor, *Oregon Voter*.

The committee studied the report of the 1956 Joint Legislative Interim Committee on Local Government, where the proposal originated, and examined previous reports of City Club committees on collateral issues, including the September 26, 1958 report on the County Home Rule Amendment. House Bill 530, to implement the proposed amendment if approved, was also studied and the committee received the advice of its two attorney members as to the legal effect of this proposal.

The literature on this subject is somewhat sparse, but the committee found the following interesting and informative: a statement by Kenneth H. Spies, Deputy State Sanitary Engineer, which in 1956 was presented to the Legislative Interim Committee on Local Government, and a paper entitled, "Have We Outgrown Our Local Governments" presented by Dr. Luther Gulick, President, Institute of Public Administration, at a meeting in May, 1958, of the Board of Trustees, Committee for Economic Development.

ANALYSIS

Based upon the committee's investigations, it is our opinion that the principle points for and against this proposal are as follows:

Affirmative Arguments

1. Many counties throughout the state need to replace existing courthouses and other facilities, but they cannot borrow the funds to meet these needs.
2. Counties experiencing rapid growth of suburban areas need sewers, sewage disposal plants, parks and other facilities, but under present law, are unduly hampered in meeting these needs as a result of inability to finance.
3. Due to the failure described above, numerous service districts have been formed to provide these services in limited areas. Such multiplicity of governmental units is not desirable because overall plans of the community are lost sight of, services are frequently inadequate, and costs are frequently high. Counties can probably borrow at lower interest rates than small special service units. Also, administrative costs would not be duplicated.
4. Sufficient control remains for creation of indebtedness by the county. Any new function must be approved by the State Legislature, and any new debt must be approved by the legal voters of the county.
5. Bancroft Bonds (Bonds issued to pay for a specific improvement and are retired out of assessments against the benefitting property) could be issued for local improvements in the county.
6. With the present inflationary trend, counties would find it more economical to borrow funds and build needed facilities now than to spread increased taxes over a few years and build at a later date.
7. The proposed amendment will implement County Home Rule. The City Club already has gone on record favoring this amendment.
8. It is equitable to spread the costs of permanent community facilities over the useful life of the facility. This amendment facilitates the issuance of bonds to accomplish this purpose.
9. In a rapidly growing county, facilities may be postponed because of lack of a tax base, but such facilities could be financed through issuance of bonds.

Negative Arguments

1. The proposed modification of the County Debt Limitation would permit increased debt and higher taxes.
2. The county would expand its functions and there may be duplication or conflicts with existing government units.
3. Improvements might be made which would benefit relatively few, but would be the general obligation of the entire county.
4. Special service districts are beneficial in that they attract people to participate in government and are limited to specific purposes.
5. The proposed amendment does not go far enough, in that the counties should have the right to set their own limits.

CONCLUSION

After carefully reviewing the arguments for and against, your committee unanimously recommends that the City Club go on record as approving modifying county debt limitation, and urges a vote of "Measure No. 6 X Yes" on this constitutional amendment.

Respectfully submitted,

JAMES GRUETTER
CRAIG KELLEY
JOHN L. KEMPLE
THOMAS E. WITHYCOMBE
BERNARD GOLDHAMMER, *Chairman*

Approved October 9, 1958, by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors October 13, 1958, and ordered printed and submitted to the membership for discussion and action.

**REPORT
ON
SALARIES OF STATE LEGISLATORS
(STATE MEASURE NO. 3)**

Purpose: To amend Oregon Constitution by increasing salaries of state legislators from \$600 to \$1200 per year.

TO THE BOARD OF GOVERNORS,
THE CITY CLUB OF PORTLAND:

Your committee was appointed for the purpose of studying and reporting on House Joint Resolution No. 13 which, if passed by voters, will amend Section 29, Article IV of the Oregon Constitution to provide that members of the State Legislature shall receive \$1200.00 per year for their services and to delete the prohibition of other personal expenses.

HISTORY

This ballot measure was introduced in the House February 7, 1957, amended by the House, then by the Senate, and reported on by Conference Committee, with final amendments May 9, 1957. In addition to fixing legislators salaries at \$1200.00 per year, it will delete "and no other personal expenses" from the Constitution.

Compensation of legislators has been fixed by the Constitution ever since Oregon became a State. Until 1941 they were allowed \$3.00 for each day, with a limit of \$120.00 for a regular session, and \$60.00 for a special session, plus \$3.00 for each 20 miles of travel to and from the session. The presiding officers received two-thirds of their per diem allowance extra. By a 1941 amendment, per diem was raised to \$8.00 per day, limited to 50 days for a regular session and 20 days for a special session, plus ten cents per mile travel allowance. Presiding officers were allowed an extra \$4.00 per diem. By 1949 amendment, pay was raised to its present \$600.00 per year, plus 10 cents per mile, with the presiding officers receiving an additional \$200.00 per year. Under this 1949 amendment, legislators pay is earned not only during the regular session every biennium, but also on interim committee work and at special sessions (Prior to 1957, no special session had been held for 24 years). Travel allowance has been for one round-trip per session.

In 1954, an amendment of Section 29 to permit legislators salaries to be prescribed by law was defeated by the voters, as also was a measure in 1956 proposing to change legislators salaries to \$1200.00 per year.

Previous City Club committees reported favorably on the 1941 and 1949 amendments which passed, as well as on the 1928, 1930, 1940, 1954 and 1956 amendments rejected by the voters.

Comparison With Other States

The committee studied compensation of legislators in other states as listed in "The Yearbook of the States—1958-1959," pages 36 and 37. Oregon ranks low, as only four states pay less, and five states pay about the same. All of the neighboring West Coast states pay higher. There are many variables in compensation over a broad range. The state paying the lowest is New Hampshire at \$200.00 a biennium, with only travel allowance, and New York is the highest, paying \$15,000.00 plus travel and \$1,000.00 additional annual expense allowance.

SOURCES OF INFORMATION

Your committee contacted legislators, party workers, members of the press, private individuals and the Secretary of State's office for arguments for and against the amendment which we list as follows:

ARGUMENTS IN FAVOR OF THE PROPOSED CONSTITUTIONAL AMENDMENT

1. Present compensation does not cover to any appreciable extent the out-of-pocket expense of legislators.
2. Large numbers of otherwise qualified persons are prevented from offering themselves as candidates for the State Legislature because they cannot afford to make the necessary financial sacrifice of out-of-pocket expense and reduction in income.
3. If legislators continue to be grossly underpaid, we are more likely to have representatives dependent for economic support upon and representing special interest groups, associations or individuals.
4. Public opinion, and the publicity that would undoubtedly be given any attempt by the legislators to vote themselves a per diem or other expenses will prevent any extravagant tendencies which might arise.
5. While half the states, including our neighbor Washington, allow their legislators to fix their own compensation (both salary and other expenses), there are no indications that this privilege has been abused. Oregon's proposed constitutional amendment sets the salary at \$1,200.00 per annum, and would grant discretion only in the area of other personal expenses.
6. Oregon ranks in the bottom 20% of legislative salaries among the various states. The proposed raise could not be considered excessive, as it would barely lift Oregon out of the lowest one-fourth.
7. Since the budget increase caused by the passage of this amendment would amount to less than 1/25th of one per cent, it could not be considered a serious financial burden upon the taxpayer.

ARGUMENTS AGAINST THE PROPOSED CONSTITUTIONAL AMENDMENT

1. The present system has, in general, produced good legislatures.
2. The removal of the prohibition against voting other personal expenses in the Constitution might result in voting extremely high "expense accounts."
3. Qualified and public spirited citizens are and should be, drawn to the Legislature by the opportunity for public service, rather than for financial gain.

CONCLUSION

After careful consideration of the information and arguments, your committee unanimously recommends that the City Club go on record as being in favor of passage of the amendment to Section 29, Article IV of the Oregon Constitution and urges a vote of "Measure No. 3 X Yes."

Respectfully submitted,

EARL DRYDEN, D.M.D.
H. CLAY MYERS, JR.
WILLIAM B. WEBBER, *Chairman*

Approved October 9, 1958, by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors October 13, 1958, and ordered printed and submitted to the membership for discussion and action.

**REPORT
ON
CAPITAL PUNISHMENT BILL
(STATE MEASURE NO. 4)**

PURPOSE: To eliminate from Oregon Constitution present provision for death penalty for first degree murder. Allows legislature to fix penalty.

TO THE BOARD OF GOVERNORS
THE CITY CLUB OF PORTLAND:

SCOPE OF INVESTIGATION

Contrary to what appears to be a general impression, neither the measure to be voted upon by the people in November nor House Bill 355* would completely abolish capital punishment. Repeal of Sections 37 and 38 of Article I of the Oregon Constitution would merely eliminate the constitutional section providing for capital punishment, but the House Bill which automatically becomes effective with such repeal restores capital punishment in certain cases, and the Legislature could, at any subsequent session, restore it in every case.

Because of the oblique method adopted for effectuating this program, your committee has had to rely upon the opinions of interested individuals, published editorials, letters and pamphlets, most of which ignore the merits or demerits of the legislation involved and espouse or denounce the cause of capital punishment as such.

There is a vast literature on the subject of capital punishment, based variously on philosophical, religious or sociological considerations. Members of your committee have studied a considerable amount of this literature, a partial list of which is attached in Appendix D, together with a summary of the principal arguments for and against capital punishment. However, your committee wishes to emphasize that this report does not concern itself primarily with the merits of capital punishment as such, but rather with the merits of the legislation to be voted upon and of the consequences which may ensue, particularly the effect of House Bill 355. Your committee fully realizes that many people will nonetheless vote yes or no on the proposed measure, depending upon whether they are for or against capital punishment. The principle arguments for and against the subject of capital punishment can be found in the appendix.

LEGAL HISTORY OF CAPITAL PUNISHMENT IN OREGON

The Constitution of Oregon as originally adopted November 9, 1857, and in force when Oregon was admitted into the Union on February 14, 1859, had no provision dealing with punishment for murder. The penalties for all crimes were fixed by statutes enacted by the Legislature. The first statute fixing the penalty for murder, Section 512 of Deady's Code Criminal Procedure, (Deady's General Laws, p. 528) provided:

"Every person convicted of murder in the
first degree shall be punished with death."

The statute fixed the penalty and upon conviction, the sentence of death automatically followed. It is interesting to note that the execution of the sentence was carried out by hanging, the means employed until 1937 when, by act of the Legislature, Chapter 274, Oregon Laws 1937, it was provided that "the punishment of death must be inflicted by the administration of lethal gas until the defendant be dead." This law is still in force.

At the election held November 3, 1914, the people adopted an amendment to the Constitution of Oregon, designated as Section 36 of Article I, which provided:

"The death penalty shall not be inflicted upon any person under the laws
of Oregon. The maximum punishment which may be inflicted shall be life
imprisonment.

"All provisions of the Constitution and laws of Oregon in conflict with
this section are hereby abrogated and repealed insofar as they conflict here-
with, and this section is self-executing."

* Since other published data on this measure have referred to the companion statute as "H.B. 355" this report will also use this reference, although this House Bill was enacted as Chapter 315, Oregon Laws 1957 which would become effective immediately if the amendment passed.

This amendment originated by initiative petition as distinguished from the instant proposed amendment referred to the people by the Legislature. There were 100,552 votes cast for the amendment and 100,395 against. This amendment prohibited the enactment by the Legislature of any statute fixing the death penalty for any crime.

The Special Session of the Legislature beginning January 12, 1920, and ending January 17, 1920, referred to the people for a vote at the special general election May 21, 1920, an amendment repealing the existing amendment prohibiting the use of the death penalty and proposing the adoption of the amendment now in force known as Section 37 of Article I. This amendment was adopted by a vote of 81,756 for said amendment and 68,589 against said amendment.

STATEMENT OF ISSUE

At the general election in November 4, 1958, the ballot will present to the voters of Oregon the following amendment to the Constitution:

"That sections 37 and 38, Article I of the Constitution of the State of Oregon, be repealed."

This proposed amendment was referred by the Legislature to the voters as a result of House Joint Resolution No. 11, passed by the Oregon Legislature in the 1957 session. A complete statement of this resolution and the vote thereon is set forth in the appendix at the end of this report.

The existing sections of Article I of the Oregon Constitution which will be repealed by an affirmative vote provide as follows:

"Section 37. *Penalty for murder in first degree.* The penalty for murder in the first degree shall be death, except when the trial jury shall in its verdict recommend life imprisonment, in which case the penalty shall be life imprisonment (Created through S. J. R. No. 8, 1920 (s. s.) adopted by people May 21, 1920.)"

"Section 38. *Laws abrogated by amendment abolishing death penalty revived.* All provisions of the laws of Oregon abrogated and repealed as in conflict with section 36, which section is herein repealed, are hereby revived as of full force and effect from and after the adoption of this constitutional amendment, subject to amendment by the legislative assembly. (Created through S. J. R. No. 8, 1920 (s. s.) adopted by people May 21, 1920.)"

Your committee was assigned the task of studying and reporting on the proposed measure to repeal Sections 37 and 38, Article I of the Constitution of the State of Oregon, as above set forth.

In substance, these provisions of the State Constitution provide that the penalty for murder in the first degree shall be death "except when the trial jury shall in its verdict recommend life imprisonment."

Obviously, if the measure is defeated, the law with reference to punishment for first degree murder would remain unchanged. Upon conviction, the penalty is death, unless the trial jury recommends life imprisonment. This provision being embodied in the Constitution cannot be changed by legislative action.

Favorable action by the voters would repeal Sections 37 and 38 of Article I, with its mandatory provision for death sentence upon conviction of first degree murder, except by recommendation of the trial jury. It would automatically bring into effect House Bill 355, the full text of which appears in an appendix, which provides for life imprisonment as a penalty upon conviction of first degree murder, except in the event that the murder was committed by a defendant already under a life sentence for murder, in which event the death penalty may or may not be imposed, as determined by the trial judge, and not by the trial jury. Furthermore, repeal of these constitutional provisions would retain the responsibility for fixing penalties for first degree murder in the Legislature, which might at any time abolish capital punishment entirely, make it mandatory upon conviction in every case, or take any other action.

House Bill 355 also contains some important provisions with reference to parole which have not been given the consideration to which they are entitled by most of the people who have spoken out either for or against the bill. These provisions require that the person convicted of first degree murder and under life imprisonment sentence cannot be paroled before serving fifteen years, and then only upon the unanimous vote of the State Board of Parole and Probation, and he remains under parole for the entire balance of his life. Under present provisions of law, a person convicted of first degree murder and sentenced to life imprisonment upon the recommendation of the trial jury, may be paroled

at any time after seven years and may thereafter be issued a certificate of discharge, which releases him from further supervision by the Board, an outcome prohibited by the new statute.

ARGUMENTS IN FAVOR OF MEASURE

Let it be noted again that the arguments submitted in the body of this report are not arguments for or against the death penalty as such. These are summarized in the appendix. They are arguments for or against the proposed amendment and the consequent legislation, although inevitably they do involve consideration of the effectiveness of capital punishment and your committee has necessarily considered these arguments in reaching its own conclusions. Some of the arguments in favor are as follows:

1. It would eliminate the death penalty for first degree murder, save in the exceptional case.
2. It would relieve trial juries of the responsibility for an irrevocable, fatal decision, the burden of which, it is believed, frequently interferes with the rendering of a fair and impartial verdict.
3. In the exceptional case, it places the responsibility for rendering the death sentence on a trained jurist—the trial judge—who presumably would be less disposed to be moved by emotional appeal, and who would have available as a basis for his sentence, social or psychiatric studies of the convicted murderer.
4. Although the governor under either the old law or the new proposal could exercise his constitutional prerogative and commute a death sentence to life imprisonment, there would be less justification for commutation in the exceptional case where the question might arise.
5. It would minimize the uneven administration of justice whereby it is claimed that only the poor and friendless murderers are ever subjected to death penalty.
6. Sociological studies demonstrate that murderers have the same “reformability” as those committing other serious crimes. The law is more in harmony with the constitutional policy that laws for punishment of crime shall be founded upon the principles of reformation and not vindictive justice. (Constitution of Oregon, Article I, Section 15).
7. The provisions of House Bill 355 not only keep a convicted murderer in custody for a longer period, but keep him under continual parole surveillance during the entire balance of his life.

ARGUMENTS AGAINST THE MEASURE

1. It does not abolish capital punishment entirely and as a matter of principle.
2. On the other hand, the amendment and the statute would practically eliminate capital punishment in Oregon.
3. The Legislature might, at any time, even in January, 1959, amend the new law making capital punishment mandatory in every case of conviction for first degree murder or might abolish it altogether.
4. The law leaves the Legislature a free hand in fixing penalties and Legislatures are subject to emotional hysteria which might be generated by particularly heinous murder, or by the execution of an innocent man.
5. The trial jury is best able to determine whether or not a death sentence should be meted out and the new law deprives it of this authority.
6. The new law gives every convicted murderer a “second bite” and perhaps several more, if he should go berserk while on parole or attempting an escape.

COMMITTEE'S CONCLUSION

Your committee was unanimous and emphatic in its condemnation of the practice employed in this case whereby the people of the State of Oregon are required to vote upon a measure by a ballot title which may bring into automatic operation another statute, the substance or title of which appears nowhere on the ballot. This is a particularly dangerous practice when the measure appearing on the ballot is one which excites violent emotional reactions, such as capital punishment.

On the merits of the amendment and the consequent House Bill 355, your committee brought to bear the mature and carefully considered viewpoints, religious, psychiatric, economic, social and legalistic, of the committee members. It is your committee's carefully considered opinion that an affirmative vote on the proposed amendment would accomplish the following results:

1. The repeal of Sections 37 and 38 of Article I would remove from the Constitution of the State of Oregon provisions for the punishment of crime that properly belong in the statute law of the state. Legislatures are certainly not less infallible than the people, nor more subject to emotional hysteria.

2. The effect of minimizing the applicability of the death sentence is in harmony with Oregon's constitutional penal policy referred to above. (There is no known instance of execution reforming a murderer, unless one adheres to the principle that "the only good murderer is a dead murderer").

3. Trial juries would be relieved of the sometimes overwhelming responsibility of imposing the death sentence, which responsibility would be shifted to the shoulders of judges, who would not only be better equipped by experience, but who would also have the benefit of studies of psychiatric, social and economic factors of the case.

4. The mandatory provision that a convicted murderer sentenced to life imprisonment must serve at least 15 years would preclude the possibility of his being "crowded out" of the penitentiary prematurely, and perhaps before the fires of his passion or his thirst for revenge had entirely subsided. Furthermore, the mandatory provision which would keep him under parole surveillance during the balance of his life was deemed to be a most salutary and important provision, entirely outweighing the "second bite" argument of the opponents.

RECOMMENDATION

Based upon the foregoing considerations, your committee unanimously recommends that the City Club go on record as recommending a favorable vote on the measure which would repeal Sections 37 and 38 of Article I of the Constitution of the State of Oregon, and urges a vote of "Measure No. 4 X Yes."

Respectfully submitted,

ALLEN E. HOFFARD
NORMAN M. JANZER, M. D.
LELAND P. NELSON
DR. PAUL S. WRIGHT*
MCDANNELL BROWN, *Co-Chairman*
MAURICE D. SUSSMAN, *Chairman*

Approved October 13, 1958, by the Research Board, with a vote of 4 in favor, 2 against and 1 absent, for transmittal to the Board of Governors.

Received by The Board of Governors October 13, 1958, and with one dissenting vote, ordered printed and submitted to the membership for discussion and action.

Appendix A

HOUSE JOINT RESOLUTION NO. 11

Introduced by Representatives Duncan, Howard, Layman, Skelton and Willner and Senators Dimick, Lewis and Sweetland and read January 31, 1957.

Be It Resolved by the House of Representatives of the State of Oregon, the Senate jointly concurring:

That sections 37 and 38, Article I of the Constitution of the State of Oregon, be repealed.

Be It Further Resolved, That the proposed amendment be submitted to the people for their approval or rejection at the next regular general election held throughout the state; and be it further

Resolved, That the Secretary of State is directed to set aside two pages in the official pamphlet containing measures referred to the people to be voted upon at the next regular

*Dr. Wright was active in the preliminary research and discussion of the committee but did not participate in the final drafting of the report or its conclusions.

general election, in which arguments in support of the proposed amendment may be printed, and a joint committee consisting of one Senator, to be appointed by the President of the Senate, and two Representatives, to be appointed by the speaker of the house, shall be appointed to prepare such argument and file the same with the Secretary of State; and to set aside two pages in which arguments against the proposed amendment may be printed, which arguments may be furnished by any person interested; provided that in case more material against the proposed amendment is offered than can be printed in two pages of the pamphlet, the Secretary of State shall select the part of such material to be printed.

Filed in the office of the Secretary of State May 21, 1957.

Senate vote: Yes—29; absent—none; excused—1.

House vote: Yes—38; No—19; absent—1; excused—2.

Appendix B

Chapter 315, *Oregon Laws*, 1957, page 417 (House Bill 355)

"AN ACT

"Relating to crimes and the punishment therefor; amending ORS 144.230, 144.310, 163.010 and 163.020; and prescribing an effective date.

"Be It Enacted by the People of the State of Oregon:

"Section 1. ORS 144.230 is amended to read as follows:

"144.230. (1) A person convicted of murder in the first degree shall not be eligible for parole until he has served at least 15 years of his sentence and shall be paroled then only on the unanimous vote of the State Board of Parole and Probation after a hearing. Notice of the hearing shall be given at least 30 days prior thereto to the district attorney of the county in which the person was convicted.

"(2) No person serving a sentence in the state penitentiary for murder in the second degree is eligible for release on parole until he has served at least seven years of his sentence.

"Section 2. ORS 144.310 is amended to read as follows:

"144.310. When any paroled prisoner has performed the obligations of his parole for such time as satisfies the State Board of Parole and Probation that his final release is not incompatible with his welfare and that of society, the board may make a final order of discharge and issue to the paroled prisoner a certificate of discharge; but no such order of discharge shall be made in the case of a person convicted of murder in the first degree and in no other case within a period of less than one year after the date of release on parole, except that when the period of the sentence imposed by the court expires at an earlier date, a final order of discharge shall be made and a certificate of discharge issued to the paroled prisoner not later than the date of expiration of the sentence.

"Section 3. ORS 163.010, is amended to read as follows:

"163.010. (1) Any person who purposely, and of deliberate and premeditated malice, or in the commission of or attempt to commit rape, arson, robbery or burglary, kills another, is guilty of murder in the first degree.

"(2) Any person who, without lawful excuse or justification, purposely kills any peace officer of this state or any municipal corporation or political subdivision thereof, when the officer is acting in the line of duty and is known to such person to be an officer so acting, is guilty of murder in the first degree.

"(3) Except as provided in subsection (4) of this section, every person convicted of murder in the first degree shall be punished by imprisonment for life.

"(4) Any person convicted of murder in the first degree committed while such person is under sentence of life imprisonment may be punished by death or life imprisonment.

"Section 4. ORS 163.020 is amended to read as follows:

"163.020. (1) Any person who kills another purposely and maliciously but without deliberation and premeditation, or in the commission or attempt to commit any felony other than rape, arson, robbery or burglary, is guilty of murder in the second degree.

"(2) Any person who kills another by an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any design to effect the death of any particular individual, is guilty of murder in the second degree.

"(3) Any person who by previous engagement or appointment fights a duel and in

so doing inflicts a wound upon another, whereof the person so injured dies, is guilty of murder in the second degree.

"(4) Every person convicted of murder in the second degree shall be punished by imprisonment in the penitentiary for not more than 25 years.

"Section 5. This Act shall not become effective unless the Constitution of the State of Oregon is amended and approved by vote of the people at the regular general election in 1958, so as to repeal sections 37 and 38, Article I thereof. This Act shall become effective upon the effective date of such amendment.

"Approved by the Governor, May 14, 1957.

"Filed in the office of the Secretary of State, May 14, 1957".

Appendix C

PRO AND CON CAPITAL PUNISHMENT ARGUMENTS

Most of the literature dealing with capital punishment, especially prior to the twentieth century, can be characterized as emotional, which apparently was effective in changing the minds of many persons about the desirability of having or not having the death sentence. In 1930, Harry Best* listed the arguments for and against the imposition of the death sentence.

The *arguments for capital punishment* as outlined by Best, which are not necessarily rebuttals to those forwarded by the abolitionists, were:

- (1) Capital punishment is the most powerful known deterrent of crime.
- (2) It is in the interest of elemental justice—a life for a life.
- (3) The offender may be a continuing danger and menace to society and it is best to have him permanently out of the way.
- (4) The aim of punishment is imprisonment may be defeated by commutation of sentence or pardon.
- (5) A person sentenced for life, with no fear of worse punishment, may be emboldened to go to any lengths—a wrongdoer perhaps being all the more tempted to kill his victim to remove a witness or to kill his keeper to effect his escape.
- (6) When imprisonment is the highest form of penalty for desperate criminals, they constitute not only a danger, but a great strain upon the security and discipline of the prison.
- (7) Fear of execution is the strongest incentive to repentance, so far as the aim of punishment.
- (8) If capital punishment were abolished, there would be greatly increased incentive and excuse for mob action or lynching.
- (9) Capital punishment is relatively inexpensive to the state.
- (10) In pleas for the doing away with capital punishment, little is heard of the rights or claims of the victim of the original wrong.
- (11) It sometimes happens that where capital punishment is rigorously applied, there is notable falling off in the number of murders.
- (12) In some states where capital punishment has been abolished, it has been restored in consequence of the increase in murders.
- (13) Capital punishment need not be looked upon as a retaliatory measure but simply as notice to the would-be murderer of the consequences of his act.
- (14) The rights of society, including its safety and protection, take precedence over all other considerations.

The arguments against capital punishment as outlined by Best were:

- (1) Capital punishment represents nothing more than the survival of *lex talionis*—an eye for an eye—a conception which society is discarding.
- (2) Society has no right to take life, no matter what has happened.
- (3) The death sentence, once executed, is beyond recall; if there has been error, there is no possibility of rectification. From time to time there is a brooding

*Best, Harry, *Crime and the Criminal Law in the United States*, The MacMillan Company, New York, New York, 1930, pp 322-324.

doubt over a community as to the actual guilt of a person executed. (In certain retrials persons once sentenced to death have been found not guilty.)

- (4) Legal executions have a generally brutalizing effect upon the community.
- (5) Capital punishment may permit no opportunity for repentance.
- (6) There is no adequate evidence to prove that capital punishment serves as a deterrent.
- (7) Those who have taken life are not necessarily hardened or hopeless offenders. In some prisons the majority, perhaps nine-tenths, of those guilty of murder in the first degree have had no previous prison record—their act of killing being their one case of offending the law.
- (8) There is no indication of an increase in homicides in these states which have abolished capital punishment. There seems to be little connection between homicide rates and capital punishment. Some states without capital punishment have actually fewer homicides than some states with it.
- (9) Lynchings have shown no increase with the abolition of capital punishment.
- (10) The offender may be mentally affected, in which case capital punishment is concededly the wrong procedure.
- (11) Capital punishment is really ineffective and useless as a means of punishment, because of general aversion to it in many quarters. Under it (a) juries will often not convict; (b) where they do convict, it is often with the hope or expectation that the Governor will exercise his right to pardon; (c) it more readily induces a plea like that of insanity; and (d) Governors are the more inclined to exercise their pardoning power.
- (12) With capital punishment abolished, punishment would be surer. Juries would be more willing to convict, and judicial machinery would operate more effectively.
- (13) Life imprisonment would be regarded as severe enough punishment. It may be removed from the possibilities of pardon. It may also be made little subject to commutations. At present there are few pardons or commutations with respect to life imprisonment.
- (14) The supposed exemplary features of capital punishment are largely given up in the increasing measures for the concealment of the actual execution.
- (15) Executions are sometimes attended with improper and offensive performances, especially in the publication of certain details.
- (16) Capital punishment diverts attention into wrong channels. Attention should be focused upon the prevention of crime and upon swift administration of justice.
- (17) The death penalty as a means of punishment is incompatible with modern theories of punishment, with their insistence upon investigation, application of subjective tests, individualization, reformation, etc. Persons guilty of crimes punishable by capital punishment should not be exempted from treatment extended to other offenders.
- (18) Capital punishment is largely imposed, not upon those guilty of the most heinous offenses, but upon those least able to defend themselves.

Appendix D

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